

# Supreme Court of Kentucky

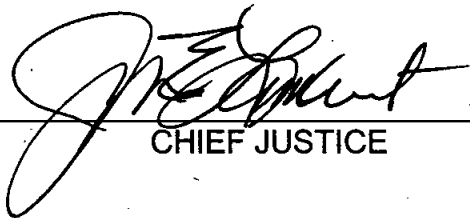
## ORDER

**IN RE: ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF PRACTICE FOR THE 9<sup>TH</sup> JUDICIAL CIRCUIT, HARDIN CIRCUIT COURT**

Upon recommendation of the Judge of the 9<sup>th</sup> Judicial Circuit, Hardin Circuit Court, and being otherwise sufficiently advised,

The amendments to the Local Rules of practice for the Hardin Circuit Court are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 6 day of March, 2007.

  
CHIEF JUSTICE

**RULES OF PRACTICE  
HARDIN CIRCUIT COURT  
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## **RULES OF PRACTICE HARDIN CIRCUIT COURT**

Pursuant to KRS 23A.010, RCr 13.02 and SCR 1.040(3)(a), the following rules are adopted for procedure in the Hardin Circuit Court and may be cited by the abbreviation "HCR" followed by the appropriate rule number:

### **RULE 1 -- EFFECTIVE DATE**

1.01. All rules of practice heretofore adopted by this Court shall be repealed, and the following rules shall take effect and be in force on and after February 5, 2007, pending approval by the Chief Justice.

1.02. Any amendment, deletions from and additions to these rules shall take effect thirty days after the adoption thereof by the Judges of the Circuit Court pending approval by the Chief Justice.

### **RULE 2 -- DIVISIONS**

2.01. The Hardin Circuit Court shall convene and transact business in three divisions, to be designated as "Hardin Circuit Court, Division I, Division II or Division III". Division I, having been designated as a Family Court division, will be governed specifically by a separate set of Rules of Practice, with the "HCR" Rules of Practice being of general application.

2.01 The Hon. Pamela Addington and her successors in office shall preside over Division I of this Court.

2.03. The Hon. Janet P. Coleman and her successors in office shall preside over Division II of this Court.

2.04. The Hon. Judge Kelly Mark Easton and his successors in office shall preside over Division III of this Court.

### **RULE 3 -- JURY SELECTION AND MANAGEMENT**

3.01. Procedures for the selection of persons to serve on juries shall be governed by the applicable Kentucky Revised Statutes and Administrative Procedures of the Court of Justice.

3.02. A new petit jury will be empaneled on the first Monday of each month except July and December. If a state holiday falls on the first Monday of a month, the petit jury will be empaneled on the Wednesday following the first Monday. Once empaneled, a member of the petit jury shall continue to serve in that capacity until a new petit jury is empaneled or until the completion of the last case on which that juror was selected to serve, whichever occurs last. For any reason authorized by KRS 29A.100, the Chief Judge or his or her designee may excuse any juror from additional service at any time. Also, for any reason authorized by KRS 29A.100, the Chief

Judge or his or her designee may excuse any juror from attendance in Court on the first Monday of the month and permit him or her to be empaneled at a later date to serve for the duration of that month.

3.03. A grand jury shall be empaneled four times each year for the following terms: The February grand jury shall be empaneled on the first Monday in February and shall serve until the first Monday in May of that year; The May grand jury shall be empaneled on the first Monday in May and shall serve until the first Monday in August of that year; The August grand jury shall be empaneled on the first Monday in August and shall serve until the first Monday in November of that year; the November grand jury shall be empaneled on the first Monday in November and shall serve until the first Monday in February of the following year.

#### **RULE 4 -- CRIMINAL PROCEEDINGS**

##### **4.01. Assignment of Cases.**

The Clerk shall prepare a stack of shuffled cards containing an equal number of cards marked for each of Divisions II and III. The Clerk shall draw, by chance and anonymously, a card from the stack and assign the next returned indictment to the division appearing on that card. This procedure will be repeated until all of the cards in the stack have been drawn, at which time the Clerk will prepare a new stack to be used in the same manner.

##### **4.02. Arraignments.**

(1) Arraignments will be conducted during the regularly scheduled criminal motion hours for each of Divisions II and III as set out in HCR 4.06.

(2) Defendants proceeded against by information shall appear and be arraigned during the regularly scheduled criminal motion hours for each of Divisions II and III as set out in HCR 4.06.

(3) An order addressing discovery and setting deadlines for the exchange of discovery shall be entered at the arraignment. The Commonwealth's offer, if any, must be sent with the Commonwealth's discovery disclosure.

##### **4.03. Jury Trials.**

(1) A trial date will be selected at the arraignment.

(2) The Court will schedule criminal trials generally in the first three weeks of each month, except in July and December.

(3) Additional jury trials may be scheduled during the first two weeks of the months of July and December at the discretion of the presiding judges.

#### **4.04. Status Conference and Pretrial Conference.**

(1) The Commonwealth Attorney's office shall set aside the first Monday afternoon of each month for scheduled status conferences between the Commonwealth and defense counsel. The Defendant's presence shall be required.

(2) The status conference shall be scheduled at least thirty (30) days after the arraignment.

(3) Settlement agreements reached at the status conference shall be scheduled for pleas with the respective division of the Court.

(4) Attendance at the status conference is excused if an agreement has been confirmed previously in writing.

(5) Pretrial conferences shall not be scheduled automatically at arraignment. Should there be issues requiring such a conference, either party may request such a conference by filing a specific motion or motions to be addressed, or the Court may schedule such a conference on its own initiative. At the pretrial conference, the Court may hear the matters raised, schedule a hearing date or defer the hearing to the trial date.

#### **4.05. Representation by Counsel.**

##### **(1) Indigent Defendants.**

All defendants charged with violation of the penal statutes who are found by the Court to be indigent shall be represented by counsel with the Kentucky Department of Public Advocacy, generally through the Elizabethtown Regional Office. Upon appointment by the Court, that agency shall designate the attorney(s) who will conduct the defense of the case.

##### **(2) Withdrawal or Removal of Counsel.**

- (A) Appointed Counsel -- Except on a showing of extraordinary circumstances, appointed counsel will not be removed or permitted to withdraw on grounds of personality conflict or refusal of the defendant to cooperate with counsel.
- (B) Retained Counsel -- Except for good cause shown, retained counsel, who has appeared for the defendant at any post-indictment proceeding, will not be permitted to withdraw prior to entry of final judgment. "Good cause" does not include inability to collect an agreed fee. "Retained counsel" means any attorney authorized to practice before this Court who has not been appointed by the Court to represent the defendant.

#### **4.06. Motions.**

(1) Motion Hour -- Motion Hour for criminal actions in Divisions II and III will begin at 10:00 a.m. on every Tuesday except during the months of July and December when Motion Hours will be held only on the first and second Tuesdays. Except for good cause shown, all motions to be heard at Motion Hour must be filed no later than 3:00 p.m. on the Wednesday immediately preceding the Motion Hour.

(2) Motions in limine -- Except for good cause shown, motions in limine shall be noticed for hearing no later than the Motion Hour immediately preceding the date of the trial.

#### **4.07. Inter-Division Transfers.**

When the Judge of any division to which a criminal case has been assigned shall be disqualified, or when the necessity for an early trial date arises, or when, in the opinion of the Judges, other good and sufficient reasons so require, upon orders signed by the Judges of the transferring and receiving divisions, any criminal proceeding may be transferred from one division to another.

#### **4.08. Absence of Presiding Judge.**

Regardless of the assignment of a criminal proceeding to a particular division, the Judge of any division may, in the absence of the other, exercise jurisdiction and sign any order or entertain any proceeding requiring immediate attention when the Judge to which said proceeding is assigned is not readily available or is incapacitated.

#### **4.09. Settlements -- Notification and Entry of Pleas.**

(1) Upon the settlement of any criminal action which is set for trial, the parties shall immediately notify the Secretary of the presiding Judge of the fact of settlement.

(2) Pleas may be entered at any time scheduled by the Court as well as during any Motion Hour.

#### **4.10. Pretrial Diversion**

##### **(1) Definition**

Pretrial Diversion is the postponement of imposition of sentence upon any person who qualifies for this program, subject to certain conditions established by the Court, for a period not to exceed five (5) years.

## **(2) Persons Eligible**

- A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.
- B. The person charged must enter a plea of guilty before becoming eligible for pretrial diversion.
- C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.
- D. A person convicted of a Class D Felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(5) shall be ineligible for this program.
- E. No person shall be eligible for this program more than once in any five (5) year period.

## **(3) Procedure**

- A. After indictment in circuit court, and no later than sixty (60) days before trial, any person eligible for the program may apply to the circuit court and the Commonwealth for entry of a pretrial diversion order.
- B. In applying for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is granted, any right to a speedy trial or disposition of the charge against said defendant is waived.
- C. The Commonwealth shall make a written recommendation to the Court in response to each application.
- D. Before making a recommendation to the Court, the Commonwealth shall:
  - (i) Have a criminal record check made by telephoning Pretrial Services at the Administrative Office of the Court or by faxing the request to said agency. Requests are not to be made or sent to the local Pretrial Services Office.

- (ii) Interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion for pretrial diversion will be heard by the Court; and
- (iii) When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful.

(4) Order of Pretrial Diversion

- A. The Court may, in its discretion, and upon a favorable recommendation from the Commonwealth, order pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate.
- B. The Order of Diversion shall include:
  - (i) Restitution, if applicable.
  - (ii) Whether the diversion shall be supervised or unsupervised. If supervised, a monthly supervision fee of \$25.00 shall be imposed on each divertee.
  - (iii) Duration of the Diversion.
  - (iv) Require defendant to obey all rules and regulations imposed by Probation and Parole.
  - (v) As required by KRS 533.030(1), direct the defendant not to commit any offense during the period of the pretrial diversion, and to comply with any other provision of KRS 533.030 or any other condition that the Court deems appropriate.
- C. The Order of Diversion may include:
  - (i) That the defendant remain drug and alcohol free and be subject to random testing.
  - (ii) That the defendant have no violation of the Penal Code or the Controlled Substances Act.
  - (iii) That the defendant possess no firearm or any other deadly weapon.
- D. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the defendant. Duration of the diversion

agreement shall not be less than the time required to make restitution in full.

**(5) Voiding a Diversion Order**

- A. After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a defendant's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or failure to make satisfactory progress.
- B. If an order of pretrial diversion is voided, the defendant shall be sentenced according to law based on the defendant's prior plea of guilty.
- C. Under KRS 533.256(2) the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5) the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided constitutes a miscellaneous proceeding, and therefore the Rules of Evidence are inapplicable to such hearings.

**(6) Completion of Diversion Program**

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed.

**RULE 5 -- CIVIL PROCEEDINGS**

**5.01. Assignment of Cases.**

(1) The Clerk shall prepare two stacks of shuffled cards containing an equal number of cards marked for each of Divisions II and III: one stack for District Court Appeal cases and one stack for all other civil cases. The Clerk shall draw, by chance and anonymously, a card from the appropriate stack and assign the next filed case to the division appearing on that card. This procedure shall be repeated until all of the cards in a particular stack have been drawn, at which time the Clerk will prepare a new stack to be used in the same manner.

(2) An action may be transferred from one division to another by an order signed by the Judges of both divisions when one of the following situations exist:

- A. The Judge to which said action was originally assigned is disqualified to hear same;
- B. There is another companion case involving like or similar facts which should be tried or considered with the same action;

- C. In the opinion of the Judges of both divisions other good and sufficient reasons exist for the transfer of any case.

(3) Regardless of the assignment of a case to a particular division, the Judge of any other division may in the absence of another Judge sign Orders and Judgments as permitted by KRS 26A.040.

(4) If a writ is filed by a person who has been indicted by the grand jury and the subject matter of the writ involves the charge for which he or she was indicted, the writ will be assigned to the same judge to whom the criminal case was assigned.

#### **5.02. Jury Trials.**

(1) The Court will schedule civil trials generally in the fourth week of each month, except in July and December.

(2) Jury trials may also be held during the first two weeks of the months of July and December, at the discretion of the presiding Judge.

#### **5.03. Equity Trials.**

All trials before the Court without a jury normally will be held during the last week of each month. Such trials may be scheduled at any time during July and December.

#### **5.04. Pretrial Proceedings.**

(1) Pretrial conferences shall not be scheduled automatically. Should there be issues requiring such a conference, either party may request such a conference by filing a specific motion or motions to be addressed, or the Court may schedule such a conference on its own initiative. At the pretrial conference, the Court may hear the matters raised, schedule a hearing date or defer the hearing to the trial date.

(2) Except for good cause shown, motions in limine shall be noticed for hearing no later than the Motion Hour on the Rule Day immediately preceding the date of trial.

#### **5.05. Civil Contempt Proceedings.**

A party moving for a rule against another party shall file the following with the Clerk:

- A. A motion for a rule and for a hearing specifying the requested hearing date;
- B. An affidavit setting forth facts supporting the motion;

- C. An order incorporating the allegation of the affidavit and setting the requested date (a Rule Day) for the responding party to appear and show cause why he should not be held in contempt, e.g.,

[CAPTION]

On \_\_\_\_\_, the Respondent was ordered to \_\_\_\_\_.

The Petitioner has filed an affidavit showing prima facie that the Respondent has violated the order by \_\_\_\_\_.

WHEREFORE, IT IS HEREBY ORDERED that the Respondent appear in this Court on \_\_\_\_\_ at \_\_\_\_\_ a.m. to show cause why he/she should not be held in contempt of court.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUDGE, HARDIN CIRCUIT COURT  
DIVISION \_\_\_\_\_

- D. Findings of Fact, Conclusions of Law and Order to be entered if the responding party is subsequently found to be in contempt.

(2) The Clerk shall submit these papers to the Judge. If the affidavit shows prima facie that the responding party is in violation of a previous court order, the show cause order will be signed, a hearing date set and all papers returned to the Clerk's office.

(3) If appropriate fees have been paid, the motion, affidavit and order will then be served on the responding party as follows:

- A. Pre-Judgment Proceedings -- A pre-judgment motion for a Rule for failure to abide by the provisions of a pendente lite order shall be served upon opposing counsel, or party not represented by counsel, no later than midnight on the Wednesday immediately preceding the Rule Day on which the motion is to be heard. "Service" shall be pursuant to Civil Rule 5.01 and as described in Civil Rule 5.02, or by placing a copy of the motion in the mail slot allotted to opposing counsel in the Clerk's office.

- B. Post-Judgment Proceedings -- A post-judgment motion for a Rule for failure to abide by the provisions of any order or judgment must be filed with the Clerk no later than ten (10) days prior to the Rule Day on which the motion is to be heard. Notice of such a motion must be served upon the adverse party and his attorney of record, if any, at least ten (10) days prior to the Rule Day for which the motion is noticed. Service upon the adverse party shall be as described in Civil Rule 4.01. Service upon the opposing attorney of record shall be as described in Civil Rule 5.02, or by placing a copy of the motion in the mail slot allotted to opposing counsel in the Clerk's office.

(4) Proof of service on the adverse party must be filed in the record before the motion will be heard.

#### **5.06. Settlements.**

(1) Upon the settlement of any civil action which is set for trial, the parties shall immediately notify the Secretary of the presiding Judge.

(2) Upon the settlement of any civil action, an agreed order of dismissal, signed by all parties or their counsel, shall be prepared and tendered to the presiding Judge for signature.

### **RULE 6 -- RULE DAYS AND MOTION HOURS**

#### **6.01. Rule Days.**

Rule days for Divisions II and III shall be held every Tuesday, except during the months of July and December, when Rule Days will be held only on the first and second Tuesdays of the month.

#### **6.02. Motion Hours.**

Motion Hour for civil actions shall begin at 9:15 a.m. for Division II and 8:30 a.m. for Division III.

#### **6.03. Motion Practice.**

(1) Any motion accompanied by an "Agreed Order" and any motion for a default judgment (if no party is entitled to notice) may be filed with the Clerk and sent directly to the presiding Judge for signature. All other motions must be noticed for a hearing at Motion Hour on a Rule Day.

(2) Each motion to be heard on a Rule Day shall be filed with the Clerk no later than 3:00 p.m. on the Wednesday immediately preceding the Rule Day for which the motion has been noticed. Each motion shall be served upon opposing counsel, or party not represented by counsel and entitled to notice, no later than midnight on the Wednesday immediately preceding the Rule

Day for which the motion has been noticed. "Service" shall be as described in Civil Rule 5.02 or by placing a copy of the motion in the mail slot allotted to that opposing counsel in the Clerk's office. All post-judgment motions must be served upon the opposing party.

(3) Each notice shall state therein, in general terms, the subject matter of the motion and the action of the Court requested by the movant.

(4) No motion will be heard by the Court unless same is accompanied by a tendered order which the movant desires the Court to enter, and by tendered Findings of Fact and Conclusions of Law if the requested order will be a final and appealable order and such Findings and Conclusions are required by law. Any motions that are improperly prepared shall be voided by the clerk and returned to the attorney of record.

(5) Any hearing required pursuant to a motion will, at the calling of the motion, be heard at said time or assigned to a date and hour for hearing. Except for good cause shown, any motion requiring a hearing of more than 15 minutes will be assigned for hearing at a specific time other than Motion Hour.

#### **6.04. Motions to Assign for Trial.**

(1) A motion to assign a civil action for trial may be filed for any Rule Day. When the motion is heard the Court may:

- A. Assign or reassign the case for trial;
- B. Schedule a pre-trial conference or status conference;
- C. Set time limitations for the completion of discovery and identification of expert witnesses;
- D. Decline to set the matter for trial;
- E. Refuse to continue the trial;
- F. Take such other action as may be appropriate.

(2) Any case previously set for trial which is continued for any reason shall be referred to mediation prior to being rescheduled for trial.

(3) Each motion for assignment of a civil action for trial must be accompanied by a tendered order, which must include the following directive:

This matter is set for trial by jury (before the court) on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The Plaintiff shall identify all expert witnesses, if any, and the subject

matter of their opinions, and provide same to opposing counsel within \_\_\_\_\_ days from the date of this Order.

The Defendant shall identify all expert witnesses, if any, and the subject matter of their opinions, and provide same to opposing counsel within \_\_\_\_\_ days from the date of this Order.

All discovery by all parties shall be completed no later than \_\_\_\_ days prior to trial.

On or before \_\_\_\_ days prior to said trial date, each party shall file with the Clerk of this Court a list of names and addresses of all witnesses (excepting parties) to be used by them at the trial, together with an itemized list of all damages proposed to be proven at trial, and a list of all exhibits proposed to be introduced as evidence, which shall be shown by certificate of attorney. A copy of all exhibits listed with the Clerk shall be provided to all opposing counsel or parties answering and not represented by counsel, unless said exhibits are too cumbersome and voluminous as to make same impracticable, in which case such exhibits shall be made available for viewing by all opposing counsel or parties answering and not represented by counsel. No other witnesses may be introduced or damages proven or exhibits received in evidence than those disclosed as above set out, except by agreement of all parties or in the sound discretion of the Court for good cause shown.

## **RULE 7 -- WARNING ORDER ATTORNEYS AND GUARDIANS AD LITEM**

### **7.01. Appointment.**

Warning Order Attorneys and Guardians ad Litem shall be appointed from a list of attorneys who are in good standing with the Hardin County Bar Association and have been approved by the presiding circuit judges, with each attorney on the list to receive an equal number of appointments. Any attorney not wishing to receive such appointments may have his or her name removed from the list by written notification filed with the Circuit Court Clerk.

### **7.02. Fees.**

(1) Any litigant, except one permitted to proceed in forma pauperis, who desires the appointment of a Warning Order/Military Attorney, shall deposit with the Clerk at the time the action is filed or request made the sum of \$125.00 as an advanced Warning Order Attorney fee. Unusual circumstances or expenses (not including typical postage expense) may justify an additional fee. A request for an additional fee must be addressed by motion to the Court.

(2) Any litigant, except one permitted to proceed in forma pauperis, who desires the appointment of a Guardian ad Litem shall deposit with the Clerk at the time the action is filed or request made the sum of \$165.00 as an advanced Guardian ad Litem fee. Unusual circumstances or expenses (not including typical postage expense) may justify an additional fee. A request for an additional fee must be addressed by motion to the Court.

(3) Unless objection has been filed, the Clerk shall pay the deposited fee to the Warning Order Attorney or Guardian ad Litem upon filing of the Warning Order Attorney's report or Guardian ad Litem's report, or upon entry of final judgment.

### **7.03. Paupers.**

Any attorney appointed as Warning Order Attorney or Guardian ad Litem in an in forma pauperis proceeding will also be appointed in the next non-pauper action where appointment of a Warning Order Attorney or Guardian ad Litem is requested and in which that attorney is eligible for appointment.

## **RULE 8 — MEDIATION**

### **8.01. Definition**

Mediation is an informal process in which a neutral third person, called a mediator, facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

### **8.02. Referral of Cases to Mediation**

At any time on its own motion or on motion of any party, the Court may refer a case or portion of a case for mediation.

### **8.03. Mediator Compensation**

The mediator shall be compensated at the rate agreed upon between the mediator and the parties if the mediator is chosen by agreement. If the mediator is appointed by the Court, the fee for the mediator shall be reasonable and no greater than the mediator's standard rate as a mediator. Unless otherwise agreed by the parties or ordered by the Court, the parties shall equally divide the mediator's professional fees.

### **8.04. Mediation Procedure**

Following selection of the mediator, the mediator shall set an initial mediation conference within thirty (30) days. The mediation conference shall be held in Hardin County unless some other site is agreed to by the parties. The mediator may meet with the parties or their counsel prior to the mediation conference for the purpose of establishing a procedure for the mediation conference. The mediator may require the parties to submit a confidential statement of the case or other materials that the mediator may reasonably believe appropriate for efficiently conducting the mediation conference.

#### **8.05. Attendance at Mediation Conference**

The parties must attend the mediation conference. Counsel shall attend the mediation conference unless otherwise agreed to by the parties and the mediator or ordered by the Court. If a party is a public entity, it shall appear by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body or officer of the entity. If a party is an organization other than a public entity, it shall appear by the physical presence of a representative, other than the party's counsel of record, who has full authority to settle without further consultation. If any party is insured for the claim in dispute, that party shall also be required to have its insurer present by the physical presence of a representative of the insurance carrier who is not that carrier's outside counsel; this representative must have full settlement authority. The foregoing requirements of attendance may be varied only by stipulation of the parties or by order of the Court for good cause shown.

#### **8.06. Completion or Termination**

The mediator may terminate the mediation conference after a settlement is reached or when the mediator determines that continuation of the process would be unproductive. After the initial mediation conference, mediation shall continue only by the agreement of the parties, their counsel and the mediator, or by order of the Court.

#### **8.07. Report to the Court**

The mediator shall report to the Court that the mediation has not occurred, has not been completed or that the mediation has been completed with or without an agreement on any or all issues. With the consent of the parties, the mediator may also identify those matters which, if resolved or completed, would facilitate the possibility of a settlement.

#### **8.08. Agreement**

If an agreement is reached during the mediation conference, it shall be reduced to writing and signed by the parties. The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.

#### **8.09. Confidentiality**

(1) Mediation sessions shall be closed to all persons other than the parties, their legal representatives, and other persons invited by the mediator with the consent of the parties.

(2) Mediation shall be regarded as settlement negotiations for purposes of KRE 408.

(3) Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matters shall be considered confidential and privileged in nature except on order of the Court for good cause shown. This privilege and

immunity reside in the mediator and may not be waived by the parties.

(4) Nothing in this rule shall prohibit the mediator from reporting abuse according to KRS 209.030, KRS 620.030, or other applicable law.

## **RULE 9 -- JUDICIAL SALES.**

### **9.01. References to the Master Commissioner.**

References of judicial sales to the Master Commissioner shall be as provided by the Rules of Civil Procedure, by the Kentucky Revised Statutes, or by these rules or by court order in individual cases. The order shall specifically indicate the purpose of the reference and the duties to be performed by the Master Commissioner.

### **9.02. Motions for Judgment and Order of Sale.**

Every motion for default judgment or summary judgment and order of sale shall be accompanied by a tendered judgment and order of sale, which shall include, but not be limited to, the following information:

(1) A statement of the manner by which this Court has acquired jurisdiction over the parties to this action. For each defendant in the suit, the tendered judgment should state:

"The Defendant, (Name), is before this Court by means of (Type of Service) (i.e., personal, warning order, long-arm, etc.), which service was accomplished on (Date)."

(2) The legal description of the property to be sold.

(3) An order of sale, which reads as follows:

"The Master Commissioner of this Court is hereby directed to sell the real estate described in the judgment at public auction to the highest bidder at a time and place designated by the Master Commissioner after first having caused the property to be appraised according to law; and having advertised the sale as to the time, terms and place by posting printed handbills at the courthouse and on or near the property to be sold for at least fifteen days prior to the date of sale, also by inserting notice thereof as to its time, terms, and place of sale together with a street address or a short description of said parcel of land for once a week for three successive weeks next preceding the date of sale in the daily newspaper of the largest circulation published in Hardin County Kentucky. The real estate shall be sold on terms of ten percent (10%) down and the balance on a credit of thirty (30) days, bearing interest at the rate of 12% per annum from date of sale until the purchase price is paid."

(4) If the purpose of the sale is to divide jointly held property and not to enforce a lien against the property, the language " . . . cause the property to be appraised according to law; and having . . . " shall not be included in the order of sale.

(5) A certificate that a copy of the tendered judgment and order of sale was served on the Master Commissioner at the time the motion is filed.

#### **9.03. Deposit for Advertisement and Appraisal**

When any order is submitted to the Commissioner requiring advertisement or appraisal, the party submitting the order shall deposit with the Commissioner an amount sufficient to pay the estimated costs of the proposed advertisement and any appraisal. The Commissioner shall not cause an advertisement or appraisal to be made until such deposit is made.

When more than one sale is set for the same date, the Commissioner may advertise all such sales in one advertisement that includes the required information applicable to each action and sale. The total cost of advertising shall be apportioned among each of the various cases to which the advertisement applies.

#### **9.04. Taxes.**

Unless specifically stated otherwise in the order or judgment, taxes for the current year shall be assumed by the purchaser and delinquent taxes and assessments against the property shall be paid out of the proceeds of the sale, for which the purchaser shall not receive credit upon his purchase price; or in the event the plaintiff is taking a credit against the judgment, then the delinquent property taxes and assessments shall be taxed as costs to be paid to the Master Commissioner.

#### **9.05. Conduct of Sale.**

(1) Deposit and Bond Requirements -- Resale Upon Failure to Comply and Credit against Judgment.

A. In every judicial sale, except where the order of sale directs otherwise, the cash deposit specified in the order or judgment of sale shall be made immediately upon the completion of the bidding. If a bond is required by the judgment or order of sale, the successful bidder must be ready to comply immediately with the terms of that bond, including having a surety available to sign the bond immediately upon the conclusion of the sale.

B. If the deposit, bond or surety requirements are not complied with immediately upon the conclusion of the bidding, the Master Commissioner may reject the bid and resell the property forthwith. In making such resale, the Master Commissioner shall accept no

bid from the rejected bidder.

- C. A party, who is the successful purchaser of the property, may take credit against any judgment in that party's favor against the defendant property owner for the required deposit and purchase price to the extent that the sale price is sufficient to pay such judgment considering the priorities and amounts previously adjudicated in the action.

(2) Interest.

Accrual of interest on the successful bid shall be suspended to the extent of any payment or deposit as of the date the payment or deposit is made to the Master Commissioner.

**9.06. Commissioner's Report, Order of Confirmation and Delivery of Deed.**

(1) The Commissioner shall file his or her report of sale with the Clerk of the Court, who shall forthwith serve notice of the filing upon all parties who would be entitled to notice of entry of a final judgment.

(2) Within ten (10) days after being served with notice of the filing of the report, any party may serve written objections or exceptions thereto upon the other parties. If no objections or exceptions are filed, the report will be automatically submitted to the presiding Judge on the eleventh (11th) day after the notice of the report was served on the parties. If objections or exceptions are filed, any party may apply to the Court for confirmation of the report by motion and pursuant to notice as described in HCR 6.03. If no objections or exceptions are filed, any party may submit an Order of Confirmation directly to the Court without notice and motion.

(3) Delivery of Deed. The party submitting the Order of Confirmation shall prepare and deliver to the Master Commissioner a deed containing at least the following:

- A. The name of all parties whose interest is being conveyed;
- B. The name and address of the purchaser;
- C. The stated consideration;
- D. The legal description of the property;
- E. The owner's source of title;
- F. A blank for the insertion of the date that the sale was confirmed by the Court;
- G. A statement that the Master Commissioner does not bind himself

personally by anything in the deed; and

- H. All other legal requirements of a deed including applicable jurat and scrivener provisions.

**9.07. Assignment of Bid.**

If the purchaser at a judicial sale desires to assign his bid to a third party, then this assignment shall be tendered to the Master Commissioner contemporaneously with the tendered order confirming the sale. The Master Commissioner shall then review the assignment before tendering same to the Clerk for filing.

**9.08. Appraiser Fees.**

In all Sales where an appraisal is required, the fee of each appraiser shall be \$90.00 unless otherwise ordered by the Court. Upon good cause shown, the Chief Judge may from time to time modify the appraiser fee.

**9.09. Commissioner's fees**

The Commissioner shall be entitled to those fees set forth in the Administrative Procedures of the Court of Justice.

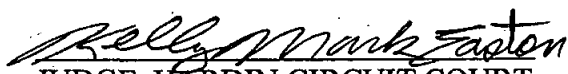
**RULE 10 -- CIRCUIT COURT FILING DEADLINE**

The filing deadline for any pleading in a circuit court matter, civil or criminal, shall be 3:00 p.m., E.S.T. Any document filed after 3:00 p.m. shall be placed in a basket and clocked in on the following business day. If an emergency exists, the clerk's office must be personally notified of the emergency situation and arrangements shall be made for the immediate filing of that particular document(s).

ADOPTED THIS 5<sup>th</sup> day of January, 2007.

  
JUDGE, HARDIN CIRCUIT COURT  
DIVISION I

  
JUDGE, HARDIN CIRCUIT COURT  
DIVISION II

  
JUDGE, HARDIN CIRCUIT COURT  
DIVISION III

CERTIFICATE

I, LORETTA CRADY, Clerk of the Hardin Circuit Court, do hereby certify that the foregoing Rules of Practice were duly signed by the HON. PAMELA ADDINGTON, the HON. JANET P. COLEMAN and the HON. KELLY MARK EASTON, Judges of the Ninth Judicial District of Kentucky and that same is hereby certified to the Chief Justice of the Supreme Court of Kentucky.

This 5<sup>th</sup> day of January, 2007.

Loretta Crady  
CLERK, HARDIN CIRCUIT COURT